

*United States Court of Appeals
for the Second Circuit*



**BRIEF FOR
APPELLANT**

76-2066

In the
United States Court of Appeals
For the Second Circuit

GEORGE HEATH,
Petitioner-Appellant,
-against-
UNITED STATES OF AMERICA,
Respondent-Appellee.

B
P/S

ON APPEAL FROM A JUDGMENT OF
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF OF APPELLANT

JAMES BING, ESQ.
Attorney for Petitioner-Appellant
One Chase Manhattan Plaza
New York, N. Y. 10005
(212) 422-3000



Table of Contents

	<u>Page(s)</u>
Table of Authorities	ii
Question Presented	1
Statement of the Case	2
 Argument	
The district court erred in failing to resentence appellant in light of the fact that the Board of Parole had issued a misleading policy statement in connection with the Board's newly adopted guidelines relating to the period of incarceration required to be served before appellant would be eligible for parole, which guidelines effectively extended appellant's period of incarceration and which guidelines and policy statement actually mislead the district court at the time appellant was resentenced pursuant to the remand of this Court.	4
Conclusion	8

Table of Authorities

<u>Cases</u>	<u>Page(s)</u>
<u>Grasso v. Norton</u> , 376 F. Supp. 116 D.Conn. 1974)	8
<u>Kortness v. United States</u> , 514 F.2d 167 (8th Cir. 1975)	7, 8
<u>Parness v. United States</u> , 368 F.2d 327 (3rd Cir. 1966)	6
<u>United States v. Hunt</u> , 413 F. 2d 983 (4th Cir. 1969)	7
<u>United States v. Slutsky</u> , 514 F.2d 1222 (2d Cir. 1975)	3
 <u>Rules</u>	
Fed. R. Civ. P., Rule 35	7

In the
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GEORGE HEATH,

Petitioner-Appellant,

-against-

UNITED STATES OF AMERICA,

Respondent-Appellee.

BRIEF OF APPELLANT *

Question Presented

Whether the district court erred in failing to resentence appellant in light of the fact that the Board of Parole had issued a misleading policy statement in connection with the Board's newly adopted guidelines relating to the period of incarceration required to be served before appellant would be eligible for parole, which guidelines effectively extended appellant's period of incarceration and which guidelines and policy statement actually mislead the district court at the time appellant was resentenced pursuant to the remand of this Court.

* Appellant Heath has previously filed his own brief, which is also before this Court. However, although that brief bears this counsel's name, counsel neither subscribes to or otherwise endorses said brief for the reason that appellant Heath did not advise or consult this counsel prior to submitting the same.

Statement of the Case

On March 6, 1973, after a trial in the District Court for the Eastern District of New York, a jury convicted appellant of the offense of violating 18 U.S.C. §§ 2113(a), (d) and (e), in that, on or about October 12, 1972, appellant had participated, with two others in a robbery of The Chase Manhattan Bank, and had taken approximately \$22,558 (Counts Two and Three of the indictment in 73-CR-116). Appellant was also convicted of violating 18 U.S.C. § 371, in that, on or about January 11, 1973, appellant had used firearms to commit the offense of conspiracy to commit bank robbery (Counts Four and Five of the indictment). Because appellant was found guilty under Count Two (robbery with a gun), he could not be found guilty under Count One (simple robbery).

On May 25, 1973, the district court sentenced appellant to imprisonment for a period of ten (10) years pursuant to 18 U.S.C. § 4208(a)(2), on each of Counts Two, Three, Four and Five, to run concurrently.

On October 17, 1973, this Court reversed the October 12, 1972, bank robbery conviction (Counts Two and Three) but affirmed the January 11, 1973, conspiracy and firearms conviction (Counts Four and Five). The Government then had Counts Two and Three dismissed.

On December 14, 1973, upon a remand from this Court, the district court resentenced appellant to serve eight and one-half (8-1/2) years pursuant to 18 U.S.C. § 4208(a)(2), (i) in connection with Count Four of the indictment and (ii) four (4) years in connection with Count Five of the indictment, both sentences to run concurrently.

By order dated June 9, 1975, the district court denied appellant's application for relief pursuant to 28 U.S.C. § 2255, on the ground that appellant's claim against the Board of Parole had been considered and adjudicated in favor of the Board of Parole by Chief Judge Sheridan of the District Court for the Middle District of Pennsylvania.

Appellant appealed the decision of the district court to this Court, which on December 12, 1975, remanded the matter to the district court "for further consideration in the light of United States v. Slutsky, 514 F.2d 1222 (2d Cir. 1975)."

Pursuant to an order of the district court dated January 30, 1976, appellant was brought before the district court for a hearing pursuant to the remand, and on February 25, 1976, a hearing was held. Appellant appeared pro se. By order dated March 1, 1976, the district court dismissed appellant's application pursuant to 28 U.S.C. § 2255.

On March 8, 1976, appellant requested that counsel be appointed in connection with a rehearing on the matter. Accordingly, on March 19, 1976, the district court ordered the appointment of the undersigned in connection with the rehearing.

Counsel represented appellant in connection with the rehearing (Civil Action No. 75-C-956) which had been assigned a new case file number (Civil Action No. 76-C-516). Accordingly, counsel treated Civil Action No. 76-C-516 as a petition for rehearing in the previous action (Civil Action No. 75-C-956). The issues considered by the district court under the new case file number were those which could have been raised at the February 25 hearing.

The district court (Weinstein, J.) dismissed each of the claims, finding no basis for further relief. Appellant Heath appealed.

Argument

THE DISTRICT COURT ERRED IN FAILING TO RESENTENCE APPELLANT IN LIGHT OF THE FACT THAT THE BOARD OF PAROLE HAD ISSUED A MISLEADING POLICY STATEMENT IN CONNECTION WITH THE BOARD'S NEWLY ADOPTED GUIDELINES RELATING TO THE PERIOD OF INCARCERATION REQUIRED TO BE SERVED BEFORE APPELLANT WOULD BE ELIGIBLE FOR PAROLE, WHICH GUIDELINES EFFECTIVELY EXTENDED APPELLANT'S PERIOD OF INCARCERATION AND WHICH GUIDELINES AND POLICY STATEMENT ACTUALLY MISLEAD THE DISTRICT COURT AT THE TIME APPELLANT WAS RESENTENCED PURSUANT TO THE REMAND OF THIS COURT.

Although the district court by its Memorandum and Order in Civil Action No. 75-C-956, dated March 1, 1976, stated that it "was aware of the procedures and guidelines of the Board of Parole at the time of resentencing", and has indicated in the final judgment being appealed from (p. 11) that "were the sentence to be imposed now, it would be identical with that now being served", appellant, nevertheless, contends that he was resentenced under a mistake of fact which affected the duration of his sentence for the reason that it was a significant factor considered by the district court at the time of resentencing. On November 13, 1973, the Board of Parole published guidelines which it would consider in fixing the time for an inmate's early release. Appellant contends the district court did not know that the guidelines would be enforced to the detriment of appellant in that his term of imprisonment would be extended contrary to the reasonable expectations of appellant and the district court.* The circumstances under which appellant was resentenced are such that resentencing would be appropriate and just.

There is law to the effect that appellant may move for reconsideration of his sentence where the sentence was

* The guidelines were published for the first time in the Federal Register on November 19, 1973, 38 F.R. 31942, 28 C.F.R. § 2.52 (1973). See Exhibit A hereto.

founded upon error. In Putt v. United States, 363 F.2d 369 (5th Cir. 1966), appellant appealed from a court order denying relief on a motion pursuant to 28 U.S.C. § 2255. Appellant complained that his sentence was void because the presentence report contained false information. It was held that where the false information had no effect on the sentence, the mere presence of the information would not constitute a ground for relief. The court indicated that had the false information affected the sentence, there might be a basis for relief pursuant to 28 U.S.C. § 2255.

In Parness v. United States, 368 F.2d 327 (3rd Cir. 1966), cert. denied 386 U.S. 919 (1967), appellant moved pursuant to 28 U.S.C. § 2255 to vacate and correct his sentence on the ground that it had been based upon false information in the presentence report. The court denied relief, holding that appellant's sentence had not been affected.

Although counsel does not take exception with the knowledge of the district court of the guidelines of the Board of Parole, appellant takes the position that the policy statement of the Board of Parole was misleading because the district court was led to believe at the time of resentencing that the guidelines were only to be considered, and would not be determinative with respect to when appellant would be eligible for early release. Appellant also contends that the guidelines were misleading in the same sense the presentence

reports referred to above might have been misleading. Assuming those presentencing reports had been found misleading, the decisions may have gone the other way. Likewise, the district court may have decided on a different term of imprisonment had it known more about the impact of the guidelines at the time appellant was resentenced.

In United States v. Hunt, 413 F.2d 983 (4th Cir. 1969), the court noted that where defendants were sentenced to less than the maximum term of imprisonment, they would have no remedy pursuant to 28 U.S.C. § 2255 "absent extraordinary circumstances". Id. at 984. Appellant takes the position that the sentencing judge's lack of knowledge with respect to the impact of the Parole Board guidelines is such an extraordinary circumstance.

Appellant argues that even though the district court had knowledge of the existence of the guidelines of the Board of Parole, the court could not have known that the guidelines would be heavily relied upon to the exclusion of other factors in determining when a prisoner would be eligible for parole.

In Kortness v. United States, 514 F.2d 167 (8th Cir. 1975), the court noted that although the guidelines purport to be discretionary, the facts indicate that the Board of Parole adheres to them in the great majority of cases. Appellant argues the guidelines are deceptive and misleading because

as of December 14, 1973, the district court could not have known what impact they would have upon his sentence. The court in Kortness stated that during the period October 19, 1973, to March 6, 1974, 88.4% of the decisions at initial parole hearings were within the guidelines. 514 F. 2d 167, 169. In Grasso v. Norton, 376 F. Supp. 116, 119 (D. Conn. 1974), the court noted that the Board of Parole follows its guidelines in 92 to 94% of all instances.

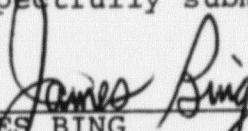
Appellant takes the position that the Court should exercise its discretion to remand this case to the district court with instructions that he be resentenced.

Conclusion

For the foregoing reasons, the Court should remand this matter to the district court with instructions that the earlier sentence be vacated and that appellant be resentenced.

July 27, 1976

Respectfully submitted,


JAMES BING

Attorney for Appellant
GEORGE HEATH,

One Chase Manhattan Plaza,
New York, N. Y. 10005
(212) 422-3000

U.S. DEPARTMENT OF JUSTICE

U.S. GOVERNMENT PRINTING OFFICE : 1973 O-730-100-1

MONDAY, NOVEMBER 19, 1973

WASHINGTON, D.C.

Volume 38 ■ Number 222



PART III

DEPARTMENT OF JUSTICE

■
PRISONERS,
YOUTH OFFENDERS, AND
JUVENILE DELINQUENTS

Parole, Statement of General
Policy

RULES AND REGULATIONS

Title 28—Judicial Administration**CHAPTER I—DEPARTMENT OF JUSTICE**
PART 2—PAROLE, RELEASE, SUPERVISION, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS**Parole, Statement of General Policy**

Pursuant to the authority of 18 U.S.C. sections 4201-4210, 5001-5037, and 28 CFR Part O, Subpart V, the United States Board of Parole has adopted the following statement of policy, effective November 19, 1973.

The Board of Parole expressly disclaims that its rules or policy statements are subject to the rulemaking provisions of the Administrative Procedure Act and does not acquiesce in the order of the United States District Court for the District of Columbia, dated July 25, 1973, in *Richard Pickus, et al. v. U.S. Board of Parole*, Civil Action No. 112-73, from which order the Board of Parole has filed an appeal to the United States Court of Appeals for the District of Columbia Circuit.

This statement of policy is published in order to inform the public of the Board's customary paroling policy. The guidelines incorporated in this policy statement are merely indications of how the Board generally intends to exercise its discretion in making future parole release decisions.

Title 28 of CFR is amended as follows by the addition of § 2.52 to read as set forth below.

Dated November 11, 1973.

MAURICE H. SIGLER,
Chairman, U.S. Board of Parole.

§ 2.52 Paroling policy guidelines; statement of general policy.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Board of Parole has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established for cases with good institutional adjustment and program progress.

(c) It is to be stressed that these ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered. For example, cases with exceptionally good institutional program achievement may be considered for earlier release.

(d) The guidelines contain examples of offense behaviors for each severity level. However, especially mitigating or aggravating circumstances in a particu-

lar case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where the circumstances warrant, clinical

evaluation of risk may override this predictive aid.

(f) These guidelines do not apply to parole revocation or reprobate considerations. The Board shall review the guidelines periodically and may revise or modify them at any time deemed appropriate.

TABLE I—ADULT GUIDELINES FOR DECISION-MAKING

CUSTOMARY TOTAL TIME (IN MONTHS) SERVED BEFORE RELEASE (INCLUDING JAIL TIME)
(REVISED OCTOBER 1973)

Offense Characteristics—Severity of Offense Behavior (Examples)	Offender Characteristics—Parole Prognosis (Salient Factor Score)			
	Very Good (0-3)	Good (4-6)	Fair (7-9)	Poor (10-12)
Low				
Immigration law violations	6-16	8-12	10-14	12-16
Minor theft (includes larceny and simple possession of stolen property less than \$1,000)				
Walkaway				
Low moderate				
Alcohol law violations	8-12	12-16	16-20	20-24
Counterfeit currency (passing/possession less than \$1,000)				
Forfeiture act, possession/purchase/sale—single or altered machine gun				
Forgery/fraud (less than \$1,000)				
Drugs				
Marijuana, possession (less than \$200)				
Selective Service Act violations				
Theft from mail				
Moderate				
Burglary of public officials	12-16	16-20	20-24	24-30
Counterfeit currency (passing/possession \$1,000-\$20,000)				
Drugs				
"Heavy Narcotics", possession by addict (less than \$200)				
Marijuana, possession (\$200 or over)				
Marijuana, sale (less than \$5,000)				
"Soft Drugs", possession (less than \$5,000)				
"Soft Drugs", sale (less than \$500)				
Endorsement (less than \$20,000)				
Felony tax evasion				
Interstate transportation of stolen/forged securities (less than \$20,000)				
Mailbox threatening communications				
Main Act (or force—commercial purposes)				
Misprescription of felony				
Receiving stolen property with intent to resell (less than \$20,000)				
Smuggling of aliens				
Theft, forgery/fraud (\$1,000-\$10,000)				
Theft of motor vehicle (not multiple theft or for resale)				
High				
Burglary (bank or post office)	16-20	20-24	26-32	32-38
Counterfeit currency (passing/possession more than \$20,000)				
Counterfeiting (manufacturing)				
Drugs				
"Heavy Narcotics", possession by addict (\$200 or more)				
"Heavy Narcotics", sale to support own habit				
Marijuana, sale (\$5,000 or more)				
"Soft Drugs", possession (\$5,000 or more)				
"Soft Drugs", sale (\$200-\$5,000)				
Endorsement (\$20,000-\$100,000)				
Interstate transportation of stolen/forged securities (\$20,000 or over)				
Organized vehicle theft				
Receiving stolen property (\$20,000 or over)				
Robbery (no weapon or injury)				
Theft, forgery/fraud (\$20,000-\$100,000)				
Very high				
Armed robbery	26-36	36-48	48-56	56-68
Drugs				
"Heavy Narcotics", possession by non-addict				
"Heavy Narcotics", sale for profit (No prior conviction for sale of heavy narcotics)				
"Soft Drugs", sale (more than \$5,000)				
Extortion				
Main Act (force)				
Sexual Act (force)				
Greater				
Aggravated robbery (e.g. armed robbery, sexual act, assault)—Weapon fired or serious injury				
Aircraft hijacking				
Drugs				
"Heavy Narcotics", sale for profit (prior conviction(s) for sale of heavy narcotics)				
Extortion				
Kidnapping				
Willful homicide				

(Specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)

- Notes: 1. If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense with those of similar offenses listed.
 2. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
 3. If an offense behavior involved multiple separate offenses, the severity level may be increased.
 4. If a continuance is to be recommended, allow 20 days (1 month) for release program provision.
 5. These guidelines are predicated upon good institutional conduct and program performance.

RULES AND REGULATIONS

31943

TABLE II—YOUTH GUIDELINES FOR DECISION-MAKING
CUSTOMARY TOTAL TIME (IN MONTHS) SERVED BEFORE RELEASE (INCLUDING JAIL TIME)
(REVISED OCTOBER 1973)

Offense Characteristics—Severity of Offense Behavior (Examples)	Offender Characteristics—Parole Prognosis (Salient Factor Score)			
	Very good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
Low				
Immigration law violations	6-10	8-12	10-14	12-16
Minor theft (includes larceny and simple possession of stolen property less than \$1,000)				
Walkaway				
Low moderate				
Alcohol law violations	8-12	12-16	16-20	20-25
Counterfeit currency (passing/possession less than \$1,000)				
Firearms act, possession/purchase/sale—single weapon—not altered or machine gun				
Forgery/Fraud less than \$1,000				
Drugs:				
Marijuana, possession (less than \$500)				
Selective Service Act violations				
Theft from mail				
Moderate				
Bribery of public officials	9-13	13-17	17-21	21-26
Counterfeit currency (passing/possession \$1,000-\$20,000)				
Drugs:				
"Heavy Narcotics", possession by addict (less than \$500)				
Marijuana, possession (\$500 or over)				
Marijuana, sale (less than \$5,000)				
"Soft Drugs", possession (less than \$5,000)				
"Soft Drugs", sale (less than \$500)				
Embezzlement (less than \$20,000)				
Explosives, possession/transportation				
Firearms Act, possession/purchase/sale—altered weapon(s), machine gun(s), or multiple weapons				
Income tax evasion				
Interstate transportation of stolen/forged securities (less than \$20,000)				
Mailing threatening communications				
Mann Act (no force—commercial purposes)				
Misprision of felony				
Receiving stolen property with intent to resell (less than \$20,000)				
Smuggling of aliens				
Theft, forgery/fraud (\$1,000-\$19,999)				
Theft of motor vehicle (not multiple theft or for resale)				
High				
Burglary (bank or post office)	12-16	16-20	20-24	24-28
Counterfeit currency (passing/possession more than \$20,000)				
Counterfeiting (manufacturing)				
Drugs:				
"Heavy Narcotics", possession by addict (\$500 or more)				
"Heavy Narcotics", sale to support own habit				
Marijuana, sale (\$5,000 or more)				
"Soft Drugs", possession (\$5,000 or more)				
"Soft Drugs", sale (\$500-\$5,000)				
Embezzlement (\$20,000-\$100,000)				
Interstate transportation of stolen/forged securities (\$20,000 or over)				
Organized vehicle theft				
Receiving stolen property (\$20,000 or over)				
Robbery (no weapon or injury)				
Theft, forgery/fraud (\$20,000-\$100,000)				
Very high				
Armed robbery	20-27	27-32	32-36	36-42
Drugs:				
"Heavy Narcotics", possession by non-addict				
"Heavy Narcotics", sale for profit (no prior conviction for sale of heavy narcotics)				
"Soft Drugs", sale (more than \$5,000)				
Extortion				
Mann Act (force)				
Sexual Act (force)				
Gravest				
Aggravated felony (e.g. armed robbery, sexual act, assault)—Weapon fired or serious injury				
Aircraft hijacking				
Drugs:				
"Heavy Narcotics", sale for profit (prior conviction(s) for sale of heavy narcotics)				
Espionage				
Kidnapping				
Willful homicide				

(Specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)

- Notes:**
1. If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense with those of similar offenses listed.
 2. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
 3. If an offense behavior involved multiple separate offenses, the severity level may be increased.
 4. If a continuance is to be recommended, allow 30 days (1 month) for release program provision.
 5. These guidelines are predicated upon good institutional conduct and program performance.

RULES AND REGULATIONS

TABLE III—NARA GUIDELINES FOR DECISION-MAKING
CUSTOMARY TOTAL TIME (IN MONTHS) SERVED BEFORE RELEASE (INCLUDING JAIL TIME)
(REVISED OCTOBER 1973)

Offense Characteristics—Severity of Offense Behavior (Examples)	Offender Characteristics—Parole Prognosis (Salient Factor Score)			
	Very good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
Low				
Immigration law violations				
Minor theft (includes larceny and simple possession of stolen property less than \$1,000)				
Walkaway				
Low moderate				
Alcohol law violations				
Counterfeit currency (passing/possession less than \$1,000)				
Firearms Act, possession/purchase/sale—single weapon—not altered or machine gun				
Forgery/fraud (less than \$1,000)				
Drugs:				
Marijuana, possession (less than \$500)				
Selective Service Act violations				
Theft from mail				
Moderate				
Bribery of public officials				
Counterfeit currency (passing/possession \$1,000-\$20,000)				
Drugs:				
"Heavy Narcotics", possession by addict (less than \$500)				
Marijuana, possession (\$500 or over)				
Marijuana, sale (less than \$5,000)				
"Soft Drugs", possession (less than \$5,000)				
"Soft Drugs", sale (less than \$500)				
Embezzlement (less than \$20,000)				
Explosives, possession/transportation				
Firearms Act, possession/purchase/sale—altered weapon(s), machine gun(s), or multiple weapons				
Income tax evasion				
Interstate transportation of stolen/forged securities (less than \$20,000)				
Mailing threatening communications				
Mann Act (no force/commercial purposes)				
Mispriision of felony				
Receiving stolen property with intent to resell (less than \$20,000)				
Smuggling of Aliens				
Theft, forgery/fraud (\$1,000-\$19,999)				
Theft of motor vehicle (not multiple theft or for resale)				
High				
Burglary (Bank or Post Office)				
Counterfeit currency (passing/possession more than \$20,000)				
Counterfeiting (manufacturing)				
Drugs:				
"Heavy Narcotics", possession by addict (\$500 or more)				
"Heavy Narcotics", sale to support own habit				
Marijuana, sale (\$5,000 or more)				
"Soft Drugs", possession (\$5,000 or more)				
"Soft Drugs", sale (\$500-\$5,000)				
Embezzlement (\$20,000-\$100,000)				
Interstate transportation of stolen/forged securities (\$20,000 or over)				
Organized vehicle theft				
Receiving stolen property (\$20,000 or over)				
Robbery (no weapon or injury)				
Theft, forgery/fraud (\$20,000-\$100,000)				
Very high				
Armed robbery				
Drugs:				
"Heavy Narcotics", possession by non-addict				
"Heavy Narcotics", sale for profit [no prior conviction for sale of heavy narcotics]				
"Soft Drugs", sale (more than \$5,000)				
Extortion				
Mann Act (force)				
Sexual Act (force)				
Greatest				
Aggravated felony (e.g., armed robbery, sexual act, assault)—weapon fired or serious injury				
Aircraft hijacking				
Drugs:				
"Heavy Narcotics", sale for profit [prior conviction(s) for sale of heavy narcotics]				
Espionage				
Kidnapping				
Willful homicide				

(Specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)

- Notes: 1. If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense with those of similar offenses listed.
 2. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
 3. If an offense behavior involved multiple separate offenses, the severity level may be increased.
 4. If a continuance is to be recommended, allow 30 days (1 month) for release program provision.
 5. These guidelines are predicated upon good institutional conduct and program performance.

RULES AND REGULATIONS

31945

GUIDELINE EVALUATION WORKSHEET

(Revised October 1973)

Case Name Register Number

SALIENT FACTORS

- Item A**
No prior convictions (adult or juvenile)=2
One or two prior convictions=1
Three or more prior convictions=0
- Item B**
No prior incarcerations (adult or juvenile)=2
One or two prior incarcerations=1
Three or more prior incarcerations=0
- Item C**
Age at first commitment (adult or juvenile) 18 years or older=1
Otherwise=0
- Item D**
Commitment/ offense did not involve auto theft=1
Otherwise=0
- Item E**
Never had parole revoked or been committed for a new offense while on parole=1
Otherwise=0
- Item F**
No history of heroin, cocaine, or barbiturate dependence=1
Otherwise=0
- Item G**
Has completed 12th grade or received GED=1
Otherwise=0
- Item H**
Verified employment (or full-time school attendance) for a total of at least 6 months during last 2 years in the community=1
Otherwise=0
- Item I**
Release plan to live with spouse and/or children=1
Otherwise=0
- Total Score**
- Offense Severity: Rate the severity of the present offense by placing a check in the appropriate category. If there is a disagreement, each examiner will initial the category he chooses.
- | | |
|--------------|---|
| Low | High |
| Low Moderate | Very High |
| Moderate | Greatest
(e.g. willful homicide, kidnapping) |
- Jail Time (Months) + Prison Time (Months) = Total Time Served To Date Months.
Guidelines Used: Youth Adult NARA
Tentative Decision

[PR Doc. 73-24533 Filed 11-16 73; 8:45am]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

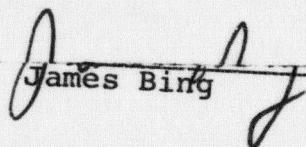
-----:
GEORGE HEATH, :
Petitioner-Appellant, : Docket No. 76-2066
-against- : AFFIDAVIT OF SERVICE
UNITED STATES OF AMERICA, :
Respondent-Appellee. :
-----:
STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

JAMES BING, being duly sworn, deposes and says:

(1) deponent is over the age of 18 years, is not a party to this action and resides at 42 Tuxedo Road, Montclair, New Jersey 07042; and

(2) that on July 27, 1976, deponent served the attached Brief of Appellant upon Appellee by mailing to the United States Attorney for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, a true copy thereof securely enclosed in a postpaid wrapper in a United States Postal Service Box located in the lobby of One Chase Manhattan Plaza, New York, N. Y. 10005.

Sworn to before me this
27th day of July 1976.


James Bing

Ralph M. Dionne
Notary Public

RALPH M. DIONNE
Notary Public, State of New York
No. 41-6042070
Qualified in Queens County
Cert. Filed in New York County
Commission Expires March 30, 1978